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March 23, 2018

Via U.S. Mail

John Nichols, Esquire
Office of Disciplinary Counsel
Post Office Box 12159
Columbia, South Carolina 29211

Re: *Circuit Court Judge Robert E. Hood*

Dear John:

The following is a report regarding what I believe to be judicial misconduct by Circuit Court Judge Robert E. Hood, and therefore something that I am required to report to your office for investigation as you deem appropriate.

We represent Charles Carpenter, an inmate at SCDC who has been incarcerated since 1990. Mr. Carpenter retained us to seek a writ of habeas corpus; his position was that his lawful sentence had been fully served and he was being illegally detained. After considerable research into the matter, we were able to identify several significant and novel issues, any one of which should have resulted in a successful outcome, so we agreed to seek that relief on his behalf. I am attaching a copy of the complaint (without exhibits attached, as they are substantial) we filed in Richland County on behalf of Mr. Carpenter against the Department of Corrections seeking Mr. Carpenter's immediate release from custody.

Judge Casey Manning was the first to hear arguments in that matter, and issued an order directing that we add "the State" as a party and serve the Attorney General, which we promptly did. Retired Chief Justice Toal next heard the Defendants' motions to dismiss and denied them. Judge Hood heard the case on the merits non-jury on June 6, 2017. We waited to file this report with you until Judge Hood's involvement had concluded¹ because we did not want our report to appear as an attempt to influence Judge Hood's actions or decisions in this matter.

At trial, no testimony was presented, although Carpenter introduced multiple exhibits. At the end of the hearing, Judge Hood indicated that he was taking the matter under advisement. The following Monday, June 12, 2017, Judge Hood's office advised that he "would like a time this

¹ We just submitted our initial brief on appeal of Hood's final orders in this matter, which finally gave us the time to gather all the relevant documents to submit to you.

week to discuss this case in chambers.” **Exhibit A.** After hearing from all counsel, Judge Hood confirmed the in chambers conference for 10:00 a.m. on June 13, 2017. **Exhibit B.**

The in-chambers conference was attended by Judge Hood and counsel for the parties. My partner Harvey Watson was physically present along with Damon Wlodarczyk on behalf of SCDC, and Clay Mitchell on behalf of the Attorney General’s office. I participated by telephone and took contemporaneous notes as the in-chambers conference proceeded. Those notes are attached as **Exhibit C**². Judge Hood said he was not going to grant habeas corpus and have Mr. Carpenter “turn around and sue the state.” Judge Hood proposed that Carpenter execute a full general release in favor of the State, in which case he would be willing to grant Carpenter’s petition. Judge Hood directed that Carpenter would “give up any claim against the state” and the release should be “very broad.” Judge Hood said the documents should be drawn so that neither the State nor SCDC was admitting any fault, and it was his intent to “protect the state.” Judge Hood asked the parties to work out the details and agree to that resolution no later than June 30, 2017. *Id.*

That same day, Carpenter’s counsel reached Carpenter by telephone and he agreed to release any civil claims he may have against any department of the State of South Carolina as a condition of the grant of habeas corpus as proposed by Judge Hood. Carpenter’s counsel communicated Carpenter’s agreement to a release to Judge Hood’s proposal to defense counsel. **Exhibit D.** Carpenter executed a full general release (that we drafted) in favor the State and the Department of Corrections as proposed by Judge Hood, and a copy of the full release was transmitted to defense counsel by email on Friday, June 16, 2017. **Exhibit E.**

Then came several weeks of no communication with either Judge Hood or defense counsel. On Friday, June 23, 2017, we contacted defense counsel to inquire as to the status of their discussions with their respective clients since the June 30, 2017 deadline imposed by Judge Hood was approaching. **Exhibit F.** Counsel for SCDC responded that SCDC was “unable to alter or amend Carpenter’s sentence.” **Exhibit G.** Similarly, counsel for the State responded that the State as “unable to consent to Mr. Carpenter’s release.” **Exhibit H.**

On Monday, June 26, 2017, Carpenter’s counsel sent to Judge Hood a proposed order, narrowly drafted to grant habeas corpus in the manner indicated by Judge Hood in chambers, along with the correspondence between counsel and a copy of the general release executed by Carpenter as requested by Judge Hood. **Exhibit I.**

To preserve the record, Carpenter’s counsel filed the entirety of the correspondence and communication referenced above, including the full release signed by Carpenter, with the Richland County Clerk of Court, so the events following Judge Hood’s proposal for a consent resolution of

² I have the original notes; the attached is a photocopy.

the petition for writ of habeas corpus were properly a part of the record.³ **Exhibit J.** Judge Hood's secretary confirmed receipt of the June 28, 2017 correspondence and advised that Judge Hood was on vacation. She related, however, "please feel free to continue to work toward a final resolution if at all possible." **Exhibit K.**

On June 30, 2017, Carpenter's counsel sent Judge Hood a proposed order addressing the merits of the petition for writ of habeas corpus, in light of the objection raised by counsel for the State. **Exhibit L.**⁴ Judge Hood went silent.

I was at the Richland County courthouse on another matter on July 11, 2017 while Judge Hood was doing guilty pleas in another courtroom. After my other matter concluded, I sat in the audience in Judge Hood's courtroom, close enough that he could see me but far enough back that it did not appear as if I was attempting to interfere with the proceedings. He made eye contact with me several times. After approximately 30 minutes, Judge Hood refused to take a plea and abruptly walked out of the courtroom and left the bench. The attorneys in the courtroom appeared confused about what had just occurred, but since the judge had not announced a recess, they remained in the courtroom. I exchanged pleasantries with several of them that I knew.

The recess lasted approximately 30 - 45 minutes. About 10-15 minutes after the recess started, a prominent criminal defense attorney whose name I did not then know, and now do not recall, entered the courtroom from the side door, with a younger gentleman. He greeted the people in the room as he passed through, then he excused himself through the back door immediately behind the judge's bench (where mere mortals are forbidden to go). He and his companion were gone about 15 minutes, then they returned to the courtroom, again greeted people, then left by the same side door from which they had entered. Judge Hood returned to the bench approximately 10 minutes later. The visiting attorney did not have any cases before the judge during the several hours that I was in the courtroom and no one from the solicitor's office left the courtroom to accompany the defense counsel into Judge Hood's chambers.

Judge Hood continued to take guilty pleas for approximately another hour, and when it appeared there were no other matters to be heard, Judge Hood asked the prosecutors if there was anything further. He made no eye contact with me, but by then I was the only person sitting in the audience. Several of the prosecutors responded in the negative and I stood just as Judge Hood stood and turned to exit the door behind the bench. I said, with enough volume to insure Judge Hood heard me, "Your Honor, may I approach?" Judge Hood turned his head to the right, did not

³ The Clerk's office returned the \$25.00 check we had forwarded as a filing fee, but confirmed that the "documents placed in file." **Exhibit M.**

⁴ Neither Judge Hood nor defense counsel have disputed any recitation of events memorialized by Carpenter's counsel in the multiple communications with the Court after the June 13, 2017 conference in chambers. Neither have defense counsel disputed our recitation of Judge Hood's proposal for a grant of habeas corpus in exchange for Carpenter's full release in favor of the State.

look at me, and said “no, ma’am” in such a loud voice that the others in the courtroom turned to look at me, as if seeking an explanation for Judge Hood’s outburst. I left immediately to avoid any questions from the people who had witnessed the event.

When I returned to my office, I emailed defense counsel and copied Judge Hood, advising that I had attempted to speak to Judge Hood while at the courthouse, and asked for another status conference. **Exhibit N.** Both opposing counsel responded to, in essence, say they were leaving that up to Judge Hood. The following day, Judge Hood requested “proposed orders” from both defense counsel. **Exhibit O.** The directive provided no guidance as to how Judge Hood intended to rule. Both defense counsel later sent proposed orders to Judge Hood which, of course, ruled in favor of their respective clients without the benefit of Judge Hood having provided input as to what his ruling was going to be. **Exhibit P.**

There was another long period of silence, despite contacting Judge Hood in late August to resubmit all the previously submitted proposed orders. **Exhibit Q.** The signed orders were finally provided to all counsel of record on October 2, 2017, more than a month after they were apparently signed.

Until the merits hearing in this matter on June 6, 2017, Carpenter and his counsel were unaware that Judge Hood had previously served as a prosecutor for the statewide grand jury.⁵ In retrospect, and with that knowledge, there seems to be an explanation for Judge Hood’s efforts to directly advocate for the State and to protect his former employer. Carpenter’s counsel can only assume that Judge Hood’s reticence to meet or communicate with counsel for the parties after Carpenter accepted Judge Hood’s proposal to grant habeas corpus to Carpenter in exchange for a full general release in favor of the State (which proposal was accepted by Carpenter) must have stemmed from Judge Hood’s realization that he had stepped over the line in advocating for the State and proposing the deal which Carpenter accepted.

In his Petition for Original Jurisdiction filed with the Supreme Court, Carpenter’s counsel briefly described Judge Hood’s bizarre offer, and noted that we were submitting this complaint to your office.

Carpenter’s counsel believed at all times that Judge Hood’s proposed release in exchange for a grant of habeas corpus was likely improper. See EAO 05-17.⁶ However, after consulting with appropriate persons, Carpenter and his counsel consented to the proposal as made by Judge Hood because it would rapidly effectuate the ultimate and proper result in this action, which

⁵ <http://www.sccourts.org/circuitCourt/displaycirjudge.cfm?judgeid=2164>

⁶ That opinion, dated October 21, 2015, opined that a solicitor could NOT “use the criminal process to obtain a favorable result for a third party in a civil action (potential or actual) even if the solicitor has no direct involvement in the civil action.”

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counsel has attempted to expedite⁷ from the outset. Nevertheless, I was so bothered by Judge Hood's actions that I consulted with Lee Coggiola, Disciplinary Counsel at the time, both immediately after the conference and then throughout Judge Hood's several months of silence between June and October 2017. **Exhibits R through T.** She agreed with me that I had to go along with the proposal for the benefit of my client, and to get him home safely first, before I reported Judge Hood to your office for investigation as to any misconduct.

We have documented this unfortunate series of events to the extent possible. Please let us know if you require anything further.

With warm personal regards, I am,

Sincerely yours,



Desa Ballard
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⁷ The initial, separate, habeas corpus pleading in the matter was captioned as "Petition for Writ of Habeas Corpus (expedited)." While no order was every signed specifically designating the matter as expedited, the Chief Administrative Judge assisted with an expediting scheduling of hearings in the matter.